

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GAUDENCIO GARCIA ORTIZ,

Plaintiff,

- against -

CESARE CONSTRUCTION CORP.;
and CESARE RIVERA,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge

ORDER ADOPTING REPORT
AND RECOMMENDATION
15-CV-4229 (RRM) (LB)

Plaintiff Gaudencio Garcia Ortiz commenced this action on July 20, 2015, alleging that his former employers, Cesare Construction Corporation and Cesare Rivera (collectively “Cesare defendants”), violated his rights under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), and the New York Labor Law, Art. 6 §§ 190–99, and Art. 19 §§ 650–655 (“NYLL”). Ortiz served the Cesare defendants, but they failed to respond or take any action in this case. (*See* Doc. Nos. 6–9, 14.) On November 23, 2015, Ortiz requested a certificate of default. On March 1, 2016, the Clerk of Court entered default. (Doc. Nos. 10, 15.) On March 16, 2016, Ortiz moved for default judgment against the Cesare defendants. (Doc. No. 18.)

The Court subsequently referred that motion to the assigned magistrate judge, the Honorable Lois Bloom, for a Report and Recommendation (“R&R”). On September 14, 2016, Judge Bloom issued her R&R, recommending that Ortiz’s motion be granted. (R&R (Doc. No. 24).) Judge Bloom reminded the parties that, pursuant to Federal Rule of Civil Procedure (“Rule”) 72(b), any objection to the R&R must be filed with fourteen days within service of the report.

On September 16, 2016, the Clerk of Court mailed a copy of the R&R to defendants Cesare Construction Corp. and Cesare Rivera at both 536 and 836 Broadway, Staten Island, New York, which mail was returned as undeliverable. On July 17, 2017, counsel for Ortiz filed an affidavit reflecting service by mail of the R&R on both defendants at 158 Cannon Avenue, Staten Island, New York. (Doc. No. 27.) To date, no party has filed any objection.

Pursuant to 28 U.S.C. § 636(b) and Rule 72, the Court has reviewed the R&R for clear error and, finding none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007).

Accordingly, it is hereby ordered that default judgment be entered in favor of Ortiz against Cesare Construction Corporation and Cesare Rivera in the total amount of \$46,845.41, comprised of

- (i) \$20,643.03 in unpaid overtime wages under the NYLL and FLSA;
- (ii) \$14,999.38 in liquidated damages;
- (iii) \$5,000 in NYLL notice violations;
- (iv) \$5,503 in attorney's fees;
- (v) \$700 in costs; and
- (vi) 9% prejudgment interest per annum from March 9, 2016 through the entry of judgment on the \$20,277.22 awarded under the New York Labor Law.

The Clerk of Court is directed to enter Judgment pursuant to this Order and to close this case. Ortiz is ordered to mail a copy of this Order and the accompanying Judgment to Cesare Construction Corporation and Cesare Rivera, and to file a letter with the Court confirming compliance within one week of the filing of this Order.

SO ORDERED.

Dated: Brooklyn, New York
October 20, 2017

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge